

IC 16-34-2

Chapter 2. Requirements for Performance of Abortion; Criminal Penalties

IC 16-34-2-1

Required circumstances of legal abortion

Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) During the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) the abortion is performed by the physician;

(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

(2) After the first trimester of pregnancy and before viability, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14).

(3) Except as provided in subsection (b), after viability of the fetus for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before viability are present and adhered to;

(B) the abortion is performed in compliance with section 3 of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in the attending physician's professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

(1) performing the partial birth abortion is necessary to save the mother's life; and

(2) no other medical procedure is sufficient to save the mother's life.

As added by P.L. 2-1993, SEC. 17. Amended by P.L. 145-1997, SEC. 2.

IC 16-34-2-1.1

Voluntary and informed consent required

Sec. 1.1. An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a midwife (as defined in IC 34-18-2-19) to whom the responsibility has been delegated by the physician who is to perform the abortion or the referring physician has orally informed the pregnant woman of the following:

- (A) The name of the physician performing the abortion.
- (B) The nature of the proposed procedure or treatment.
- (C) The risks of and alternatives to the procedure or treatment.
- (D) The probable gestational age of the fetus, including an offer to provide:
 - (i) a picture or drawing of a fetus;
 - (ii) the dimensions of a fetus; and
 - (iii) relevant information on the potential survival of an unborn fetus;at this stage of development.
- (E) The medical risks associated with carrying the fetus to term.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be orally informed of the following:

- (A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of family and children.
- (B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.
- (C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(3) The pregnant woman certifies in writing, before the abortion is performed, that the information required by subdivisions (1) and (2) has been provided.

As added by P.L.187-1995, SEC.4. Amended by P.L.1-1998, SEC.118.

IC 16-34-2-1.2

Physician's duty to inform women in medical emergency of necessity for abortion

Sec. 1.2. When a medical emergency compels the performance of

an abortion, the physician who will perform the abortion shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert:

- (1) the woman's death; or
- (2) a substantial and irreversible impairment of a major bodily function.

As added by P.L.187-1995, SEC.5.

IC 16-34-2-2

Responsibilities of attending physician

Sec. 2. It shall be the responsibility of the attending physician to do the following:

- (1) Determine in accordance with accepted medical standards which trimester the pregnant woman receiving the abortion is in.
- (2) Determine whether the fetus is viable.
- (3) Certify that determination as part of any written reports required of the attending physician by the state department or the facility in which the abortion is performed.

As added by P.L.2-1993, SEC.17.

IC 16-34-2-3

Viable fetus; requirements; preservation of life and health of viable unborn child; certificates of birth and death; offense of failure to preserve life; ward status of child

Sec. 3. (a) All abortions performed after a fetus is viable shall be:

- (1) governed by section 1(a)(3) and 1(b) of this chapter;
- (2) performed in a hospital having premature birth intensive care units, unless compliance with this requirement would result in an increased risk to the life or health of the mother; and
- (3) performed in the presence of a second physician as provided in subsection (b).

(b) An abortion may be performed after a fetus is viable only if there is in attendance a physician, other than the physician performing the abortion, who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing the abortion, and after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to

Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(d) If, before the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the child, if born alive, shall immediately upon birth become a ward of the county office of family and children.

As added by P.L.2-1993, SEC.17. Amended by P.L.4-1993, SEC.243; P.L.5-1993, SEC.256; P.L.145-1997, SEC.3.

IC 16-34-2-4

Written consent of parent or guardian of unemancipated pregnant woman under 18 years of age; conditions of waiver; representation by attorney; appeal; confidential records; emergency abortions

Sec. 4. (a) No physician shall perform an abortion on an unemancipated pregnant woman less than eighteen (18) years of age without first having obtained the written consent of one (1) of the parents or the legal guardian of the minor pregnant woman.

(b) A minor:

(1) who objects to having to obtain the written consent of her parent or legal guardian under this section; or

(2) whose parent or legal guardian refuses to consent to an abortion;

may petition, on her own behalf or by next friend, the juvenile court for a waiver of the parental consent requirement under subsection (a).

(c) A physician who feels that compliance with the parental consent requirement in subsection (a) would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may petition the juvenile court within twenty-four (24) hours of the abortion request for a waiver of the parental consent requirement under subsection (a).

(d) The juvenile court must rule on a petition filed by a pregnant minor under subsection (b) or by her physician under subsection (c) within forty-eight (48) hours of the filing of the petition. Before ruling on the petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests.

(e) Unless the juvenile court finds that the pregnant minor is already represented by an attorney, the juvenile court shall appoint an attorney to represent the pregnant minor in a waiver proceeding brought by the minor under subsection (b) and on any appeals. The cost of legal representation appointed for the minor under this section shall be paid by the county.

(f) A minor or her physician who desires to appeal an adverse judgment of the juvenile court in a waiver proceeding under

subsection (b) or (c) is entitled to an expedited appeal, under rules to be adopted by the supreme court.

(g) All records of the juvenile court and of the supreme court or the court of appeals that are made as a result of proceedings conducted under this section are confidential.

(h) A minor who initiates legal proceedings under this section is exempt from the payment of filing fees.

(i) This section shall not apply where there is an emergency need for a medical procedure to be performed such that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and the attending physician so certifies in writing.

As added by P.L.2-1993, SEC.17.

IC 16-34-2-5

Forms to be completed by physician; offenses

Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

- (1) The age of the woman who is aborted.
- (2) The place where the abortion is performed.
- (3) The full name and address of the physicians performing the abortion.
- (4) The name of the father if known.
- (5) If after viability, the medical reason for the abortion.
- (6) The medical procedure employed to administer the abortion.
- (7) The mother's obstetrical history, including dates of other abortions, if any.
- (8) The results of pathological examinations if performed.
- (9) Information as to whether the fetus was delivered alive.
- (10) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for each abortion performed for the last six (6) months of the preceding year. Each failure to file the form on time as required is a Class B misdemeanor.

As added by P.L.2-1993, SEC.17.

IC 16-34-2-6

Experiments performed on aborted fetus prohibited

Sec. 6. No experiments except pathological examinations may be

conducted on any fetus aborted under this chapter, nor may any fetus so aborted be transported out of Indiana for experimental purposes. A person who conducts such an experiment or so transports such a fetus commits a Class A misdemeanor.

As added by P.L.2-1993, SEC.17.

IC 16-34-2-7

Performance of unlawful abortion; offense

Sec. 7. (a) Except as provided in subsections (b) and (c), a person who knowingly or intentionally performs an abortion not expressly provided for in this chapter commits a Class C felony.

(b) A physician who performs an abortion intentionally or knowingly in violation of section 1(a)(1)(C) or 4 of this chapter commits a Class A misdemeanor.

(c) A person who knowingly or intentionally performs an abortion in violation of section 1.1 of this chapter commits a Class A infraction.

(d) A woman upon whom a partial birth abortion is performed may not be prosecuted for violating or conspiring to violate section 1(b) of this chapter.

As added by P.L.2-1993, SEC.17. Amended by P.L.187-1995, SEC.6; P.L.145-1997, SEC.4.